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February 28, 2003

Mattie C. Condray
Senior Assistant General Counsel
Office of Legal Affairs
Legal Services Corporation
750 First Street, NE
Washington, DC 20002-4250

Re: Limited English Proficiency Guidance - Request for Comments

Dear Ms. Condray:

The National Immigration Law Center (NILC) submits these comments in response to the Legal Services Corporation's (LSC) Limited English Proficiency Guidance-Request for Comments, published in the Federal Register on January 9, 2002. As a project of the Legal Aid Foundation of Los Angeles, NILC was an LSC-funded national support center for issues of immigration law and immigrants' rights until 1996, when all national support funding ended. Now incorporated as an independent organization, NILC has continued to assist legal services programs and other nonprofit agencies on these issues. These comments urge LSC to develop guidance to assist local legal services programs in meeting their obligations under Title VI.

LSC Grantees are Recipients under Title VI

As a threshold matter, LSC's request for comments questions whether LSC grantees should be considered recipients of federal financial assistance for purposes of Title VI. Federal financial assistance is defined broadly under Title VI. According to DOJ regulations:

The term Federal financial assistance includes: (1) Grants and loans of Federal funds, (2) The grant or donation of Federal property and interests in property, (3) The detail of Federal personnel, (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

28 CFR §42.102(c).

When Federal funds are passed through from a recipient to a subrecipient, the subrecipient is also a recipient of federal financial assistance:

f) The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, *to whom Federal financial assistance is extended, directly or through another recipient*, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 CFR §42.102(f)(emphasis added).

As LSC's request for comments states, LSC is "funded through annual appropriations from Congress." These undeniably federal funds are passed on to local LSC programs. The local programs are therefore recipients under Title VI, and must comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient (LEP).

LSC Should Issue Guidance

LSC's request for comment asks whether LSC should instruct its recipients on Title VI compliance through guidance, issue regulations regarding compliance, distribute best practices information or do nothing. We urge LSC to follow the lead of the Department of Justice and other federal agencies and issue guidance to assist its grantees in meeting their Title VI obligations. Guidance is the most effective means for LSC to advise its recipients on how to provide meaningful access in the unique legal services program setting. This information may be particularly beneficial to grantees located in states with new or growing LEP populations. Best practices information is not an effective substitute for guidance. While guidance can, and should, include best practices information, it places this information within a context that communicates its fundamental importance as a non-discrimination standard.

The request for comments questions whether LSC Guidance would be duplicative or inconsistent, given that many LSC grantees receive funding from federal agencies such as DOJ, the Department of Housing and Urban Development and the Internal Revenue Service. As explained in the DOJ Final LEP Guidance, the purpose of LEP Guidance is to provide "an analytical framework that recipients may use to determine how best to comply

with statutory and regulatory obligations to provide meaningful access” to LEP persons. Regardless of their other sources of support, LSC grantees would benefit from Guidance that aids their understanding of Title VI compliance within the LSC program context. In this respect Guidance is preferable to regulations, because it would fit within the established framework of guidance issued by funds-granting agencies to assist their recipients in meeting their statutory and regulatory obligations under Title VI.

LSC also questions whether it would have the ability to investigate complaints that may arise under guidance it issued. LSC regulations on termination and debarment clearly grant LSC the authority to investigate complaints that local programs have engaged in serious violations of Title VI, as a law applicable to LSC funds:

The purpose of this rule is to: (a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation.

45 CFR §1606.1

As with violations of Section 504 of the Rehabilitation Act, violations of Title VI rise to the level of substantial noncompliance because “discriminatory practices by legal services programs interfere directly with the ability of those programs to provide high quality legal services in an efficient and effective manner.” 44 FR 55175, quoted in LSC Request for Comment at 68 FR 1212.

The request for comment suggests that LSC’s enforcement power under these rules is inadequate because it is limited to negotiating informal resolutions and terminating or suspending grants. We believe that the threatened loss of LSC funding provides a major incentive for program compliance. In addition, where programs are also funded by federal agencies, the addition of LSC guidance will not cause the agencies to lose any of their enforcement power. Finally, in many cases, an informal settlement through which a program undertakes to improve its language assistance services best meets the underlying goal of making legal services available, on a non-discriminatory basis, to persons who cannot afford them.

We thank you for the opportunity to submit these comments, and look forward to working with LSC in developing its guidance. Please let us know if we can provide any additional information by contacting Gabrielle Lessard at (213) 639-3900 x 114.

Respectfully,

Gabrielle Lessard
Staff Attorney
National Immigration Law Center